



1 Haines city limits. The exemption was also contingent on the absence of justified  
2 customer complaints.

3 In May 2001, HSI notified Commission Staff (Staff) that it had  
4 entered into a ten-year exclusive contract with the City for refuse collection and  
5 disposal of waste.<sup>2</sup> Among other things, the contract required HSI to petition us  
6 to withdraw HSI's exemption and to establish HSI's rates in compliance with our  
7 statutes.<sup>3</sup>

8 Our Staff requested HSI to file a tariff and a copy of the contract between  
9 HSI and the City. On July 20, 2001, HSI filed its current tariff, the contract with the  
10 City, and a financial report for Fiscal Year 2000. HSI also requested a waiver of the  
11 requirements under 3 AAC 48.275(a) to file information to substantiate its proposed  
12 rates.

#### 13 Discussion

14 The exemption from rate regulation granted to HSI in 1993 was intended  
15 to enhance local control over refuse collection in Haines. Under AS 29.35.050, a  
16 municipality has authority to provide for a system of refuse and solid waste collection  
17 and disposal and to take other actions listed in that statute to carry out the system.

18 <sup>2</sup>Letter from Lynda B. Walker, President of HSI, filed May 4, 2001.

19 <sup>3</sup>While HSI's petition to withdraw its exemption was pending before us,  
20 we received another application for a certificate of public convenience and  
21 necessity to provide refuse collection and disposal service in the Borough of  
22 Haines. See Docket U-01-20, entitled *In the Matter of the Application of Paul*  
23 *Nelson d/b/a Acme Transfer Company (Acme) for a Certificate of Public Convenience*  
24 *and Necessity to Provide Refuse Service within the Haines Borough*. HSI moved to  
25 intervene in that application, opposed temporary authority, and participated in  
26 our hearing on the Acme application held on October 15, 2001. Our Order  
U-01-20(10), issued concurrently with this Order, grants that application and  
explains in detail our reasons for concluding that the public convenience and  
necessity requires that service.

1 Although a municipality's authority under AS 29.35.050 may sometimes come into  
2 conflict with our own statutory authority to regulate refuse utilities,<sup>4</sup> we believe that a  
3 local government is in the best position to determine the community's needs and make  
4 the decisions necessary to make the refuse collection plan successful. In this case,  
5 the City has entered into a contract with HSI, agreeing to its exclusive right to collect  
6 refuse within the City and establishing some terms and conditions of that service. The  
7 City and HSI, however, have asked that we resume economic regulation and  
8 determine the rates to be charged by HSI.

9 If we granted HSI's petition to resume economic regulation, we would  
10 decide the rates to be charged using a utility ratemaking methodology that calculates  
11 the rates necessary to cover the utility's expenses and provides a reasonable return to  
12 the utility's investment in property devoted to utility service. However, standard utility  
13 ratemaking may only lead to a "death spiral" for a utility if customers opt to discontinue  
14 the service because they perceive the rates as too high. The extensive testimony we  
15 heard in Docket U-01-20<sup>5</sup> suggested that high rates charged by HSI have indeed  
16 driven away many of its customers. Testimony at that hearing showed that HSI served  
17 310 customers in 1999, but only 191 today. (Tr. 199, 225). Evidence at that hearing  
18 also showed that the Haines community suffers from serious problems of illegal  
19 dumping. The City has statutory authority that we do not have to make refuse  
20 collection mandatory within its boundaries or to take other actions to address these  
21 problems. We think that splitting regulatory responsibility between the local  
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24 <sup>4</sup>AS 42.05.641 provides that in case of a conflict between a ruling of the  
25 commission or the local governmental entity, the decision of the commission shall  
26 prevail.

<sup>5</sup>HSI was permitted to intervene and participated fully in this hearing.

3                    Instead of rescinding HSI's exemption from economic regulation, we  
4 choose to modify the conditions imposed when HSI was granted an exemption from  
5 economic regulation in 1993. Specifically, we remove the condition that HSI must  
6 charge the same rates in the Borough that it charges in the City. In  
7 Order U-01-20(10), issued at the same time as this order, we are granting the  
8 certificate application of Acme and thereby are allowing competitive refuse collection  
9 service in the Borough outside the City limits of Haines. For its customers in the  
10 Borough, HSI must be allowed to consider the competition in setting its rates. Acme  
11 will be exempt from rate regulation by us under AS 42.05.711(i). HSI should likewise  
12 be exempt from rate regulation to have a level playing field. For customers within the  
13 city limits, the City should address HSI rates and customers complaints under  
14 AS 29.35.050 authority.

**16 THE COMMISSION FURTHER ORDERS:**

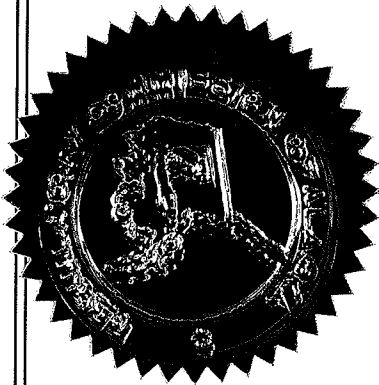
17                   1.     The petition of Haines Sanitation, Inc. to rescind the exemption  
18 from economic regulation granted by Order U-91-24(4), dated March 24, 1993, is  
19 denied.

20                   2.    The conditions of exemption from economic regulation for  
21 Haines Sanitation, Inc. set out in Order U-91-24(4), are modified, as set out in the  
22 body of this Order.

1                   3.    Ordering Paragraph No. 1(c) of Order U-91-24(4), dated  
2 March 24, 1993, is vacated.

3 DATED AND EFFECTIVE at Anchorage, Alaska, this 29th day of March, 2002.

4                   BY DIRECTION OF THE COMMISSION  
5 (Commissioners G. Nanette Thompson, Chair,  
6 and Patricia M. DeMarco, not participating.)  
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